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Security Council

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Letter dated 2 October 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached addendum to the supplementary report from Cook Islands submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

03-54901 (E) 161003

Annex

Letter dated 16 September 2003 from the Prime Minister of the Cook Islands addressed to the Chairman of the Counter-Terrorism Committee

As the anniversary of the 11 September 2001 terrorist attacks passes us by, it leaves in its wake a poignant call to the global community to increase its efforts to strengthen the weak links in our chain to combat terrorism in all its forms.

In that regard, it is my pleasure to submit herewith, for the consideration of the Counter-Terrorism Committee, the addendum to the Cook Islands supplementary report on counter-terrorism activities in the Cook Islands (see enclosure). The addendum should be read in conjunction with the supplementary report. I trust that the information contained herein is an indication of my Government's commitment to combat terrorism.

The Cook Islands accords serious attention to the efforts by the United Nations and the Security Council to fight terrorism in all its manifestations and will continue to cooperate in that regard.

(*Signed*) Hon. Dr. Robert **Woonton**
Prime Minister

Enclosure

ADDENDUM TO SUPPLEMENTARY REPORT TO THE UNITED NATIONS SECURITY COUNCIL COUNTER-TERRORISM COMMITTEE ON COUNTER-TERRORISM ACTIVITIES IN THE COOK ISLANDS

Ministry of Foreign Affairs and Immigration
Government of the Cook Islands
September 2003

Addendum to Supplementary Report to the United Nations Security Council Counter-Terrorism Committee on Counter-Terrorism Activities in the Cook Islands

1. INTRODUCTION

1.1 This report serves as the Addendum to the Supplementary Report submitted by the Cook Islands to the Counter-Terrorism Committee of the United Nations Security Council on 7 June 2002.

2. TREATIES AND OTHER INTERNATIONAL ACTION

Bilateral Treaties

2.1 The Cook Islands has concluded a number of bilateral treaties (other than treaties relating to extradition) with the following countries:

- New Zealand (21 June 1986);
- Niue (30 July 1991);
- Samoa (23 June 1993);
- Chile (16 June 1992);
- Fiji (26 February 1999).

International Co-operation

2.2 The 31st South Pacific Chiefs of Police Conference took place in Rarotonga, Cook Islands from 7-11 October 2002. The theme of the Conference was "Combating Terrorism, Organised Crime, Sex Crimes". Delegates from twelve Pacific Island Countries attended the Conference.

2.3 In February 2003, the Deputy Prime Minister of the Cook Islands created the "Anti-Money Laundering and Counter-Terrorist Financing Working Group" chaired by the Minister's Legal Adviser. Representatives of banks, trustee companies and various Government agencies are included on the Working Group. The purpose of the Working Group is to ensure that the Cook Islands are removed from the Financial Action Task Force on Money Laundering ('FATF') 'List of Non-Cooperative Countries and Territories' as soon as possible.

2.4 The FATF had corresponded with the Deputy Prime Minister in February 2003 seeking confirmation from the Cook Islands that it would undertake the following activities:

1. Adopt a comprehensive legal framework to combat money laundering (referred to below in Section 3 on Domestic Legal Action).
2. Commit to implement a comprehensive legal framework to combat the financing of terrorism.
3. Further commit to implement international standards relating to the regulation of domestic and offshore banks.
4. Stop shell banks from operating from the Cook Islands.
5. Provide evidence that the Cook Islands administrative authorities are providing effective cross-border co-operation with other jurisdictions and that there are no restrictions on their ability to do this.
6. Actively and effectively participate with the International Monetary Fund ('IMF') technical assistance and assessment programs.

2.5 In order to address the FATF concerns the Cook Islands requested that the IMF conduct a diagnostic mission. The mission took place in March 2003 and the purpose of which is as follows:

1. To review the powers, structure, composition and procedures of the financial services regulatory authority, and to advise on measures necessary to implement relevant international standards;
2. To review the current legal provisions relating to the supervision of domestic banks (and other key financial institutions), advise on appropriate amendments, and recommend operational practices to ensure effective implementation;
3. To assess the structure of the offshore banking sector, examine the regulatory practices and resources, and advise on: (i) the implementation of an effective supervisory regime in the local context; and (ii) necessary amendments to the Offshore Banking Act to support a regime that complies with international standards;
4. Review the anti-money laundering and combating the financing of terrorism legislation and advise on: (i) the adequacy of the current legal provisions, and revisions required to support a legal framework that complies with international standards; and (ii) the supervisory arrangements necessary to ensure proper compliance by domestic and offshore financial institutions (including insurance companies).

2.6 Experts in banking supervision and anti-money laundering frameworks took part in the IMF mission. The IMF review concerns were addressed in the context of the Working Group.

2.7 The Deputy Prime Minister presented a suite of legislation to Parliament on 7 May 2003 as a response to the FATF concerns and the IMF review concerns. The Banking Act 2003 came into force on the 1 June 2003 and the others came into force on the 3 June 2003. The suite is described in Section 3 below.

2.8 The Cook Islands Government is fully committed to implementing a comprehensive legal framework to combat the financing of terrorism. The Pacific Islands Forum Secretariat has established an Expert Working Group to prepare draft model counter-terrorist financing provisions for use by Pacific Islands Forum countries, and in that regard, the Cook Islands has informally approached the Secretariat and identified itself as a country requiring urgent in-country legislative drafting assistance ('first priority') to adapt the model provisions to our domestic needs. A legal draftsperson funded by the New Zealand Government will work on future legislative amendments in relation to countering terrorism and terrorist financing in particular to amend the Crimes Act 1969, Proceeds of Crime Act 2003, Mutual Assistance in Criminal Matters Act 2003, and Financial Transactions Reporting Act 2003.

2.9 On 31 March and 1 April 2003, the Pacific Immigration Director's Conference (PIDC) Working Group Meeting was held at the Forum Secretariat in Suva, Fiji. The Cook Islands attended the Meeting along with representatives from other PIDC member states. During the two-day meeting, delegates developed a comprehensive PIDC Integrity Programme Proposal, to table at its Annual Conference in September. The Programme includes a PIDC Integrity Self Assessment Guide and will include a model Code of Conduct. Participants at the meeting also discussed strategies to encourage information exchange amongst members and endorsed a reporting form for attempted clandestine travel. The Meeting also took the opportunity to discuss security issues for immigration as well as reviewing the draft model legislative provisions for asylum seekers and refugee determination.

2.10 The Cook Islands Customs Administration hosted the 5th Annual Conference of Customs Heads of the Ocean Customs organisation (OCO) from 7-11 April 2003. The Conference noted the increased security threats posed to the OCO region from transnational criminal activities. Amongst other things, issues discussed included drug trafficking, firearms, money laundering and people smuggling and illegal migration. The Conference agreed to pay particular attention to money laundering and the trade in precursor chemicals by undertaking regional assessments through the identification of current controls and vulnerabilities. The Conference also acknowledged the role the OCO has played in the development of model legislation for use in the region for weapons control, illicit drug control and the need to comment on the draft legal provisions

relating to UN resolution 1373 and the Convention on Transnational Organised Crime and its Protocols together with the twelve UN Conventions.

2.11 The 17th Asia-Pacific Roundtable was held in Malaysia from 6-9 August 2003 and hosted by the CSCAP-Malaysia (Council for Security Cooperation in the Asia Pacific) and the Malaysian Institute for Strategic Studies. The meeting is an annual gathering of Asia Pacific's intellectual, intelligence and strategic institutions and agencies, and sub-regional organisations, such as the Pacific Islands Forum Secretariat and ASEAN. The Roundtable is the key Asia Pacific regional forum outside of the formal intergovernmental processes for sharing of information, and frank exchange of views on the wider regional security environment, cooperative initiatives, and emerging trends in threats to regional security. The participants included academics, past diplomats, military analysts/strategists and law enforcement agencies as well as foreign policy advisors. The Cook Islands as the current Chair of the Forum Regional Security Committee represented the region at the Roundtable. The Roundtable considered *inter alia* the following issues: security and economic outlook for the Asia Pacific 2003/2004, the internet's challenges to national security, regional efforts at responding to terrorism in Southeast Asia and fighting transnational crime – why the poor results?

3. DOMESTIC LEGAL ACTION

3.1 The following suite of anti-money laundering legislation was adopted in May 2003 by the Parliament of the Cook Islands aimed at providing effective monitoring and prosecution of persons who have committed serious offences, including the offence of money laundering. The implementation of the suite of legislation in the Cook Islands is also one of the requirements of the FATF in order for the Cook Islands to be removed from the FATF 'blacklist'.

1. United Nations (Security Council Resolutions) Act 2003
2. Extradition Act 2003
3. Mutual Assistance in Criminal Matters Act 2003
4. Financial Transactions Reporting Act 2003
5. Proceeds of Crime Act 2003
6. Financial Supervisory Commission Act 2003
7. Banking Act 2003
8. Crimes Amendment Act 2003
9. International Companies Amendment Act 2003
10. Criminal Procedure Amendment Act 2003

3.2 The Extradition Act 2003, Mutual Assistance in Criminal Matters Act 2003 and the Proceeds of Crime Act 2003 are based the regional model laws prepared under the auspices of the Pacific Islands Forum Secretariat. These Acts are part of a suite of legislation required under the Pacific Island Forum's Honiara Declaration and the Cook Islands Anti-Money Laundering legislative framework. The Financial Transaction Reporting Act 2003 was based on a draft model law prepared by the Legal Department of the International Monetary Fund. Each of the four Acts was drafted by a draftsperson funded by the New Zealand Government in consultation with the Legal Department of the International Monetary Fund.

3.3 The United Nations (Security Council Resolutions) Act 2003 will enable the Queen's Representative in the Cook Islands to make regulations by Order in Executive Council to give domestic effect to UNSC Resolutions with respect to threats to the peace, breaches of the peace and acts of aggression. Penalties for an offence against this Act in the case of an individual, to imprisonment for a term not exceeding 12 months Work has continued on the drafting of those Regulations.

3.4 The purpose of the Extradition Act 2003 is to codify the law relating to the extradition of persons to and from the Cook Islands. It repeals existing laws on extradition that were part of the Cook Islands Act 1915 and introduced in 1969 through the extension of the New Zealand Extradition Act 1965. The Extradition Act 2003 sets out separate categories within which other countries are placed – Commonwealth countries; South Pacific countries; Treaty countries and Comity countries. The Extradition Act 2003

provides for different applications or considerations to be given under the Act in accordance with the category within which the requesting country falls. The Schedule to the Act lists countries in the different categories.

3.5 An offence is an extradition offence under the Extradition Act 2003 if – "(a) it is an offence against a law of the requesting country punishable by death or imprisonment for not less than 12 months or the imposition of a fine of more than $5, 000; and (b) the conduct that constitutes the offence, if committed in the Cook Islands, would constitute an offence (however described) in the Cook Islands punishable by death or imprisonment for not less than 12 months or the imposition of a fine of more than $5, 000." In determining whether conduct constitutes an offence, regard may be had to only some of the acts and omissions that make up the conduct. In determining the maximum penalty for an offence for which no statutory penalty is imposed, regard must be had to the level of penalty that can be imposed by any court in the requesting country for the offence. An offence may be an extradition offence although – (a) it is an offence against a law of the requesting country relating to taxation, customs duties or other revenue matters, or relating to foreign exchange control; and (b) the Cook Islands does not impose a duty, tax, impost or control of that kind.

3.7 The Mutual Assistance in Criminal Matters Act 2003 is aimed at setting up a legal framework regulating and facilitating the provision, by the Cook Islands, of international assistance in criminal matters when a foreign country makes a request.

3.8 The Financial Transactions Reporting Act 2003 ("FTRA") was prepared to address the concerns of the FATF in implementing a comprehensive legislative framework that is aimed at monitoring and prosecuting proceeds of serious offences including the offence of money laundering. The FTRA replaces components of the now repealed Money Laundering Prevention Act 2000. The FTRA establishes the Financial Intelligence Unit (FIU) and imposes certain obligations on financial institutions in the Cook Islands to report transactions of $10, 000 and over to the FIU and to report any suspicious transaction to the FIU. The FTRA therefore facilitates the prevention, detection, investigation and prosecution of money laundering and other serious offences and the enforcement of the Proceeds of Crimes Act 2003 by establishing this entity to collect, analyse and disseminate suspicious transaction reports and other financial information. The financial information a financial institution is required to obtain must be retained for six years (s.6 (6)) and in a form that allows the FIU to readily reconstruct a transaction (s.6(2)) and the FIU may enter the premises of financial institutions to ensure compliance with the Act (s.30). The provisions of the FRTA specifically override the secrecy provisions in other legislation.

3.9 The Proceeds of Crime Act 2003 forms part of the anti-money laundering suite of legislation that is aimed at providing effective monitoring and prosecution of persons who have committed serious offences, including the offence of money laundering. The purpose of the Proceeds of Crime Act 2003 is to deprive persons who have committed serious offences, of the proceeds, property and benefits derived from the commission of such offences. It enables law enforcement authorities to trace such proceeds, property or benefits. The Proceeds of Crime Act 2003 creates the ability to 'deal' with the proceeds of crime including freeze, seize, and confiscation powers (these powers were previously contained within the Money Laundering Prevention Act 2000 now repealed).

3.10 The Financial Supervisory Commission Act 2003 replaces two Acts, i.e., the Offshore Financial Services Act 1998 and the Monetary Board Act 1981. This Act creates a new licensing, regulatory and supervisory body by abolishing the present Office of the Commissioner for Offshore Financial Services. The principal object of the Act is to establish the Financial Supervisory Commission, which is responsible for the supervision and regulation of domestic and offshore banks, offshore insurance companies and trustee companies according to internationally recognised standards. The Act establishes a Financial Supervisory Board consisting of five members appointed by the Minister, which may delegate its supervisory functions to the Commissioner. The Commission also has broad powers to obtain disclosure of information from a financial institution, which includes all of the acts that allow the establishment of offshore entities, partnerships and trusts.

3.11 It is a condition of every license issued to a licensed financial institution under the Financial Supervisory Commission Act 2003 that it must employ a person as a Compliance Officer. The Compliance Officer is responsible for ensuring that the financial institution by whom the Officer is employed shall establish and maintain office and accounting procedures for customer identification; record keeping and retention and any other matters that may be prescribed by regulation. The Financial Supervisory Commission can obtain from a licensed financial institution information sought by an equivalent overseas regulatory authority when required. If the licensed financial institution does not provide the information requested, the Commission may seek an order from the High Court compelling the institution to comply. The Commission may disclose such information for the purpose of assisting that overseas authority in enforcing laws administered by it. However, the Commission has discretion whether or not to provide such assistance.

3.12 The Banking Act 2003 consolidates and amends the law relating to the issue of domestic and offshore banking licences and the regulation and supervision by the Financial Supervisory Commission of those banks. The Act replaces both the Banking Act 1969 and the Offshore Banking Act 1981-82. The Act provides that no person (which under the Acts Interpretation Act 1954 includes a company) can carry on business without being licensed under the Act.

3.13 There are three types of licences that may be issued under the Banking Act 2003, namely, domestic banking licence, international banking licence and restricted international banking licence. A domestic banking licence enables the licensee to carry on domestic banking business in the Cook Islands with residents of or visitors to the Cook Islands in any currency. Such licensees may also carry on banking business with persons overseas provided such business is done in Cook Islands currency. Such banks have until now been licensed under the Banking Act 1969. An international banking licence enables the licensee to carry on with persons who are not residents of the Cook Islands or with international companies, partnerships and trusts incorporated or registered in the Cook Islands under the International Companies Act 1981-82, the International Trusts Act 1984, or the International Partnership Act 1984. A restricted international banking licence is a new category available to foreign banks licensed in their home jurisdiction, who wish to carry on banking business through the Cook Islands. Such licensees can only operate in the Cook Islands through a trustee company licensed under the Trustee Companies Act 1981-82.

3.14 The Banking Act 2003 provides that a person, who wishes to carry on banking business in or from the Cook Islands, must apply to the Financial Supervisory Commission for a licence. Every applicant must be a corporation or a statutory body. A penalty is imposed for providing false information to the Commission. The supervisory functions of the Commission in relation to banks include the responsibility to maintain stability and confidence in the banking system and ensure that banking due diligence standards are to international acceptable levels. To help maintain standards, the Commission may issue directives and guidelines.

3.15 There are several obligations imposed on Licensees under the Banking Act 2003. Banks other than those holding a restricted licence, to have premises at a fixed address in the Cook Islands, from which the bank must operate. The financial and other records of the bank must be kept at that address. Every bank other than a restricted bank, must have at least two directors who are natural persons, one of whom must be a resident of the Cook Islands. A licence other than a foreign bank, may not establish a branch outside the Cook Islands without the approval of the Commission. Approval cannot be given unless the regulatory authority in the country where it is proposed to establish the branch also approves its establishment.

3.16 The Crimes Amendment Act 2003 came into force on 3 June 2003 and gives effect to the Palermo Convention regarding organised and other crimes. The Crimes Amendment Act 2003 creates new offences by including a 'list' of identified offences falling within international requirements as to 'serious offences' and widens powers in relation to corruption and conspiracy such as organised crime, corrupt use of official information, conspiring to defeat justice, corrupting juries and witnesses, money laundering, people smuggling, sexual offences, market trading offences, and possession of offensive weapons and disabling substances and altering and reproducing a document with the intent to defraud.

3.17 The Crimes Amendment Act 2003 also adds to the extra-territorial effect of the principal Act by providing that in respect of certain offences even if the acts constituting an offence occurred outside of the Cook Islands, the person committing those acts can be charged if that person is ordinarily resident in the Cook Islands, or if the acts took place on a Cook Islands registered ship, or aircraft.

3.18 The International Companies Amendment Act 2003 deals with the risk of bearer debentures (i.e., "bearer shares") and now creates the requirement for immobilisation and possession by a 'custodian'.

3.19 The Criminal Procedure Amendment Act 2003 amends the Criminal Procedure Act 1980-81 by introducing provisions enabling the Police to apply to a Judge of the High Court, for permission to intercept private communications where there are reasonable grounds for believing that a group of people are organised for criminal purposes and are contemplating committing or have committed a serious offence. The policy is to update the law of the Cook Islands to international standards in order to assist in the prevention and detection of organised crime.

3.20 The new suite of legislation has created investigative tools in the form of orders and warrants. There are defences available to those who disclose information, in good faith, or as required by legislation. This includes the disclosure of sensitive financial information for example the contents of a suspicious transaction report pursuant to the FTRA.

3.21 Officers of the Cook Islands Crown Law Office, Police, Ministry of Foreign Affairs and Immigration and Financial Supervisory Commission continue to work closely together in the preparation of legislation, especially legislation for giving effect to the Cook Islands' international obligations in relation to terrorism and related subjects.

3.22 The Cook Islands Government is fully committed to implementing a comprehensive legal framework to combat the financing of terrorism.

4. SUPPORTING ACTIONS

4.1 The Terrorism Suppression Bill which is still being drafted will cover the ability to freeze without delay, funds, other financial assets and economic resources held in the Cook Islands by persons and entities linked to terrorist acts.

4.2 The Money Laundering Prevention Act 2000 and Money Laundering Regulations 2002 were repealed by the FTRA. The Money Laundering Authority ("MLA") no longer exists and has not been replaced by a counter-part agency under the new regime. Instead, the MLA's former responsibilities have been distributed amongst other agencies of Government.

4.3 The Financial Intelligence Unit is the lead agency with respect to collection, analysis and dissemination of suspicious transaction reports and other financial information in respect of money laundering. The Financial Supervisory Commission has a compliance role in relation to ensuring that licensed financial institutions (banks, trustee companies and insurance companies) meet their records keeping and customer verification and identification obligations.

4.4 The Police continue to have responsibility for investigating the offence of money laundering whilst the Crown Law Office continues to have responsibility for prosecuting the offence of money laundering.

4.5 In its efforts to improve communications and information exchange amongst its members, the Pacific Immigration Directors' Conference ('PIDC') and the Oceania Customs Organisation ('OCO') has been exploring the possibility of a secure, real time information exchange system. Impressed with the CAPERS system (Customs Asia-Pacific Enforcement Reporting System), the CAPERS Steering Committee made the system available to PIDC and OCO members on a trial basis. The Cook Islands Customs Services has signed up to the CAPERS system.

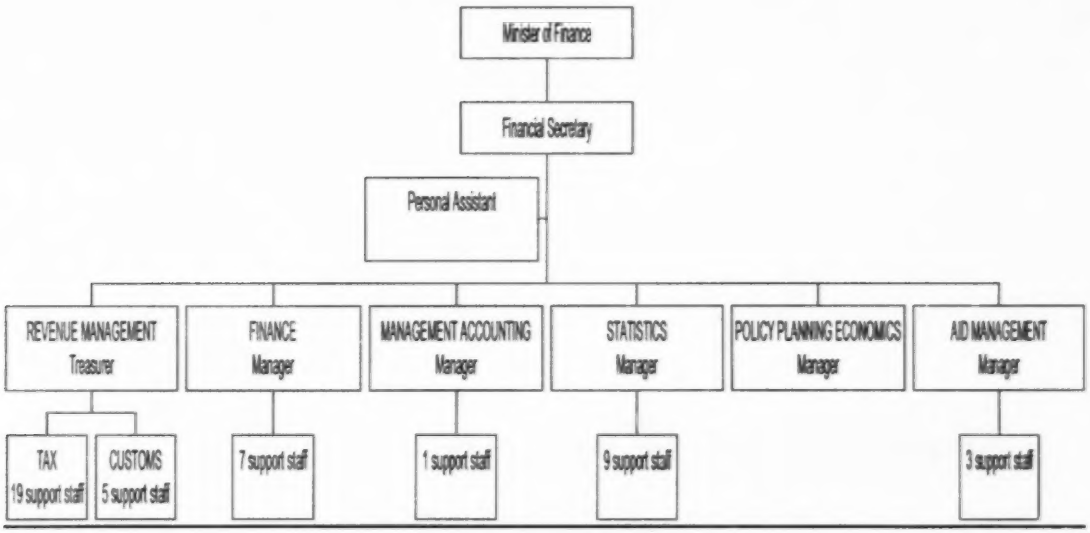
4.6 Following the events of 11 September 2001, the International Maritime Organization developed new measures relating to the security of ships and of port facilities for adoption by a Conference of

Contracting Parties to the International Convention for the Safety of Life at Sea, 1974 ('SOLAS'). The Conference held in December 2002, adopted new provisions to SOLAS and the International Ship and Port Facility Security (ISPS) Code. These new measures form the international framework through which ships and ports can detect and deter acts that threaten security in the maritime sector. The ISPS Code will apply to ships and to ports facilities and in the case of the latter, solely to the ship/port interface. The Cook Islands has started implementing the provisions of the ISPS Code by undertaking a Security Assessment Process. The main elements of the process include identifying risks to the security of the ports facilities in the Cook Islands and determining preventive security strategies. A Maritime Security Committee was formed in August 2003 comprising representatives from the Police, Customs, Immigration, Ports Authority, Ministry of Marine Resources, Ministry of Agriculture – Quarantine, Ministry of Health – Port Health and the Ministry of Foreign Affairs and Immigration.

Supplementary Report to the United Nations Security Council Counter-Terrorism Committee on Counter-Terrorism Activities in the Cook Islands

Annex I

MINISTRY OF FINANCE & ECONOMIC MANAGEMENT ORGANISATION CHART



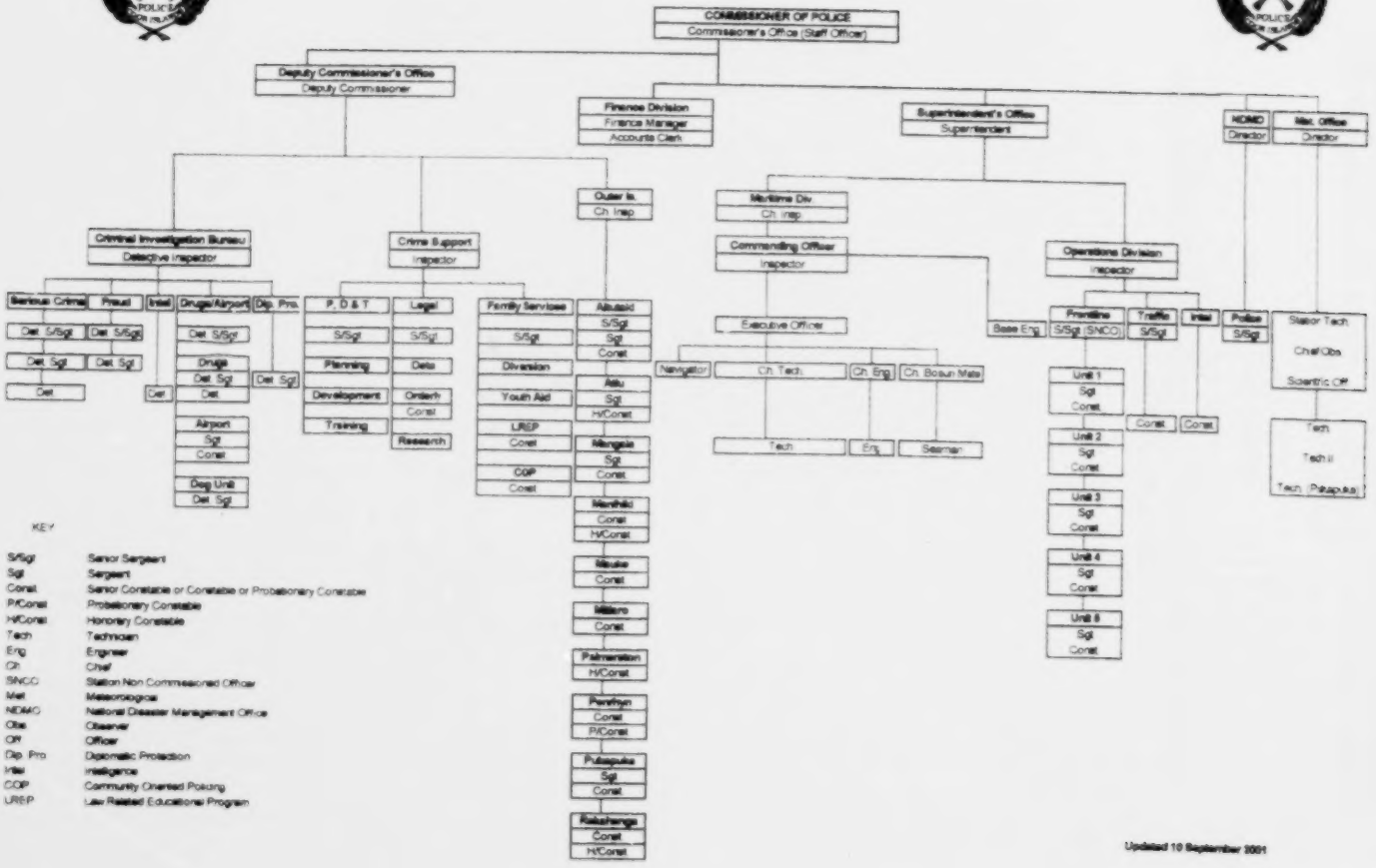
Supplementary Report to the United Nations Security Council Counter-Terrorism Committee on Counter-Terrorism Activities in the Cook Islands

Annex II

COOK ISLANDS POLICE ORGANISATION CHART

See attachment.

COOK ISLANDS POLICE ORGANISATIONAL STRUCTURE



KEY

S/Sgt	Senior Sergeant
Sgt	Sergeant
Const	Senior Constable or Constable or Probationary Constable
P/Const	Probationary Constable
H/Const	Honorary Constable
Tech	Technician
Eng	Engineer
Ch	Chief
SNCO	Station Non Commissioned Officer
Met	Meteorological
NEMO	National Disaster Management Office
Obs	Observer
Off	Officer
Dip. Pro	Diplomatic Protection
Intel	Intelligence
COP	Community Oriented Policing
LREP	Law Related Educational Program

Updated 10 September 2001

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Supplementary Report to the United Nations Security Council Counter-Terrorism Committee on Counter-Terrorism Activities in the Cook Islands

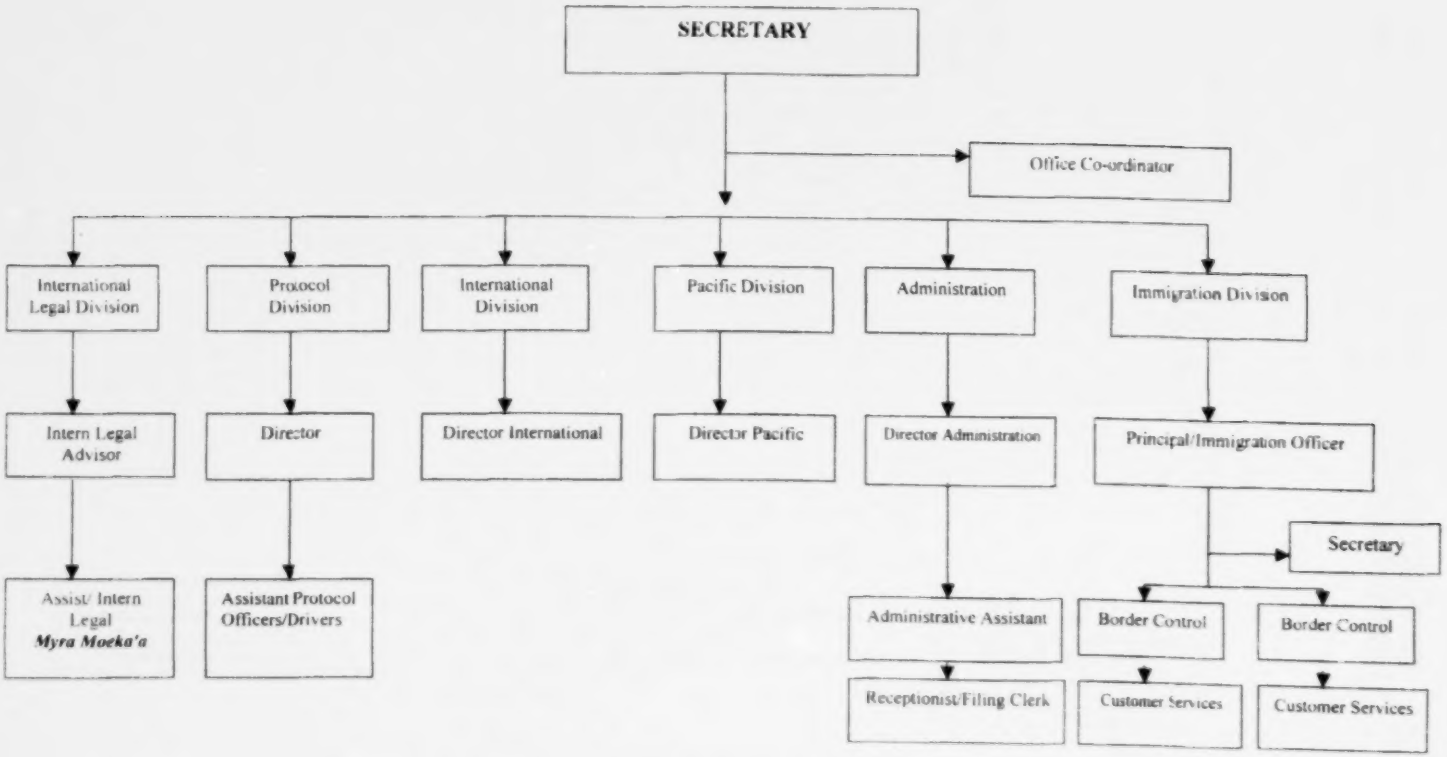
Annex III

MINISTRY OF FOREIGN AFFAIRS AND IMMIGRATION ORGANISATION CHART

See attachment.

MINISTRY OF FOREIGN AFFAIRS & IMMIGRATION

ORGANISATIONAL CHART



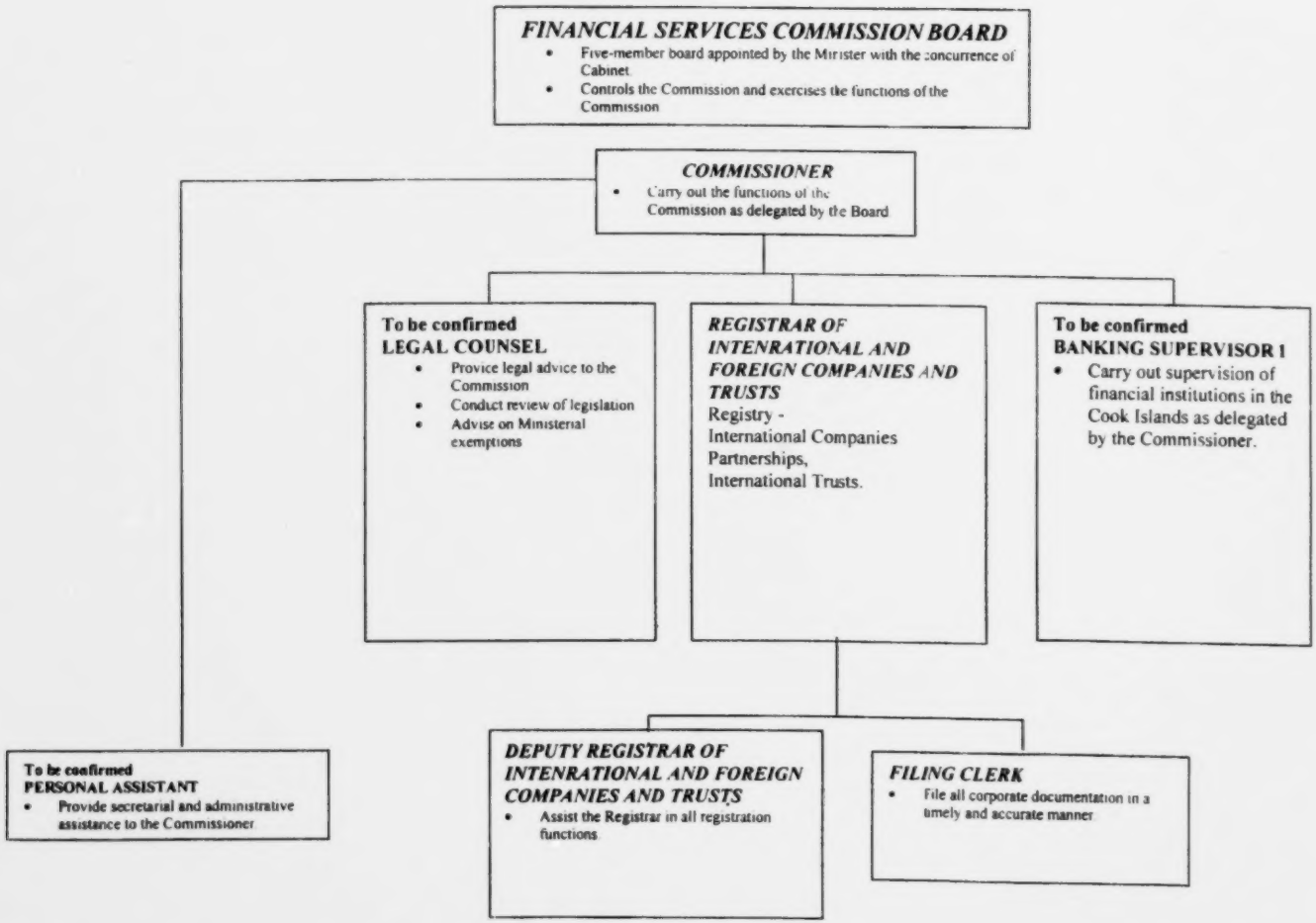
S/2002/1448/Add.1

Supplementary Report to the United Nations Security Council Counter-Terrorism Committee on Counter-Terrorism Activities in the Cook Islands

Annex IV

FINANCIAL SUPERVISORY COMMISSION ORGANISATION CHART

See attachment.


FINANCIAL SERVICES COMMISSION BOARD
Five-member board appointed by the Minister with the concurrence of Cabinet
Controls the Commission and exercises the functions of the Commission
COMMISSIONER
Carry out the functions of the Commission as delegated by the Board
To be confirmed
LEGAL COUNSEL
Provice legal advice to the Commission
Conduct review of legislation
Advise on Ministerial exemptions
REGISTRAR OF INTENRATIONAL AND FOREIGN COMPANIES AND TRUSTS
Registry - International Companies Partnerships, International Trusts.
To be confirmed
BANKING SUPERVISOR 1
Carry out supervision of financial institutions in the Cook Islands as delegated by the Commissioner.
To be confirmed
PERSONAL ASSISTANT
Provide secretarial and administrative assistance to the Commissioner
DEPUTY REGISTRAR OF INTENRATIONAL AND FOREIGN COMPANIES AND TRUSTS
Assist the Registrar in all registration functions
FILING CLERK
File all corporate documentation in a timely and accurate manner